

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA,)	
)	
)	
)	
v.)	Docket No. 2:19-cr-00059-NT
)	
STEPHEN KISSH,)	
)	
Defendant.)	

ORDER ON MOTION FOR COMPASSIONATE RELEASE

On October 5, 2020, Defendant Stephen Kissh filed a *pro se* motion for compassionate release. Def. Mot. (ECF No. 101). I have considered his motion, the submission by the United States Probation Office, and Mr. Kissh's response to my Order to Show Cause.

The Defendant is a 54-year-old inmate at Devens FMC. He asserts that he has various medical conditions, which I credit as they existed at the time of his sentencing. He is at high risk for severe complications should he contract COVID-19. On October 6, 2020, I issued an Order to Show Cause as to why his motion should not be denied on the basis that the Bureau of Prisons was reporting no active inmate infections at Devens FMC. Order to Show Cause (ECF No. 104). Mr. Kissh subsequently responded to the Order to Show Cause, and he continues to request release based on his various medical conditions. Def. Resp. to Order to Show Cause ("**Def. Resp.**") (ECF No. 105). In particular, Mr. Kissh alleges that his health has worsened. Def. Resp. 1. He acknowledged that at the time of his response that Devens FMC had no present inmate infections. Def. Resp. 3.

After Mr. Kissh submitted his response, the Bureau of Prisons reported, on October 21, 2020, one active inmate infection at Devens FMC. However, it is now one week later, and Devens FMC continues to report only one active inmate infection. Bureau of Prisons, COVID-19 Inmate Test Information, available at <https://www.bop.gov/coronavirus/> (last visited Oct. 28, 2020). It thus appears that Devens FMC has contained whatever potential there may have been for a COVID-19 outbreak. While the circumstances have slightly changed since Mr. Kissh's response, this slight change is not material.

I cannot find on this record that the Defendant has established "extraordinary and compelling reasons" for early release. 18 U.S.C. § 3582(c)(1). Should the infection levels at Devens FMC materially change, Mr. Kissh is free to renew his motion.

CONCLUSION

Because the Defendant does not satisfy the requirements for release under 18 U.S.C. § 3582(c)(1), his motion for compassionate release (ECF No. 101) is **DENIED** without prejudice. For the same reasons, his motion to appoint counsel (ECF No. 101) is **DENIED**.

SO ORDERED.

/s/ Nancy Torresen
United States District Judge

Dated this 28th day of October, 2020